See *Union Credit Bank* v. *Mersey Docks and Harbor Board*, 1899, 2 Q. B. 205, 211, 214. The author's second statement depends on the authority of one subsequent case, and is probably correct, although the liability involved was that of an acceptor only, not of a drawer. *Scholfield* v. *Londesborough*, [1896] A. C. 514. In America the decisions are generally confined to cases of notes, and the courts are not agreed whether a negligent maker is liable to an innocent holder for value after alteration. A respectable line of decisions imposes such liability. *Hackett* v. *First Nat'l Bank of Louisville*, 70 S. W. Rep. 664. Some courts have, however, reached an opposite conclusion. *Greenfield Savings Bank* v. *Stowell*, 123 Mass. 196.

Whatever be the result of the cases, it would seem on principle that there could be no valid distinction such as that which the English courts have tried to lay down. The drawer of a bill, subsequently raised, can be liable to the acceptor only because of negligence. And if he has been negligent, his liability ought to extend to any innocent subsequent party injured by that misconduct. The drawer knows the instrument is likely to come into the hands of a holder in due course, and he ought to answer for negligence which facilitates alteration and causes the holder loss. The reasoning, moreover, which holds a maker or drawer, ought equally to apply to an acceptor. The latter does not, it is true, determine the original form of the instrument. He may, however, refuse to accept a bill negligently drawn, or, if this would give rise to inconvenience, he may strike his pen through the blank spaces that suggest and encourage alteration. See EWART, ESTOPPEL, 47. By his acceptance he assumes a primary liability on the bill, and ought to use reasonable care in dealing with it. To this standard drawer, maker, and acceptor alike should be held. It certainly is no more than reasonable care for one primarily liable on an instrument to see that it passes into circulation so drawn as not easily to be altered.

RES GESTAE. — This rather vague branch of the law forms the subject of a recent article by a well-known text-writer. *The Doctrine of Res Gestae in the Law of Evidence*, by Sidney L. Phipson, 19 L. Quart. Rev. 435 (Oct. 1903). In one important respect the author takes a position at variance with that of most of the authorities, and one which would seem to be erroneous. After examining the cases he decides that the *res gestae* principle does not properly cover the use of declarations as evidence of the truth of what they assert.

Mr. Phipson accurately divides the declarations, which are denominated *res gestae*, into two classes: (1) Those which *constitute* the transaction in issue, *e. g.* the words alleged as the basis of an action for slander; (2) Those which *accompany* and *explain* the transaction in issue. In the first class the declarations are of course not evidence at all, and so are not the subject of any doctrine of evidence. In the second class they are evidence, and as such may have value in one of two ways only: (a) as evidence of the facts they assert, *i. e.* testimonially; (b) as bases for inference as to the existence of other facts, independent of the truth or falsity of the declarations themselves, *i. e.* circumstantially. All relevant circumstances, including, of course, declarations, are admissible in evidence unless forbidden by some special rule of exclusion. Declarations falling under class (b) may, then, always go in, if only they shed light, either on the manner in which a transaction happened, or on the intention in the mind of an actor where that intention gives legal character to his otherwise equivocal act. And their admissibility does not depend on their being a part of and contemporaneous with the transaction which they explain. For example, on an indictment for homicide it is shown that a bystander shouted to the defendant that the deceased had a loaded pistol, the object being to prove, not that in fact the deceased did have the weapon, but that the defendant acted reasonably. It will hardly be contended that the same declaration would not be equally admissible for the purpose if made on the previous day. The doctrine of *res gestae*, then, is meaningless unless it applies to declarations under class (a), and Mr. Phip-

son's contention that it does not so apply would amount to denying the doctrine any proper place in the law.

On the other hand, the doctrine becomes perfectly rational if it be taken to apply to declarations used testimonially. The hearsay rule would forbid their use in this manner, but they are admitted because the circumstances render them more trustworthy than ordinary hearsay. The declarations must, however, be so close in time to the act as to be really a part of the transaction, *i. e.* they must have been made spontaneously, under the influence of the situation.

On this view, also, the variety of opinion, the existence of which Mr. Phipson points out, as to the admissibility as *res gestae* of utterances by other parties than the actors becomes explicable. Whether or not the force of a particular situation lends sufficient sanction to the words of those not directly concerned in it, is eminently a question for difference of opinion. But there could be no reason whatever for excluding such declarations, if they were to be used only circumstantially. The case supposed above will again serve as an illustration. It thus appears that not only is the doctrine of *res gestae* as laid down by the cases perfectly intelligible when applied to the use of declarations testimonially, but it would seem quite inapplicable to their use in any other way.

RIGHT TO COMPETE. — Mr. D. R. Chalmers-Hunt has added a valuable contribution to the discussion of the rights and liabilities of those engaged in business or labor competition. *Trade Unionism and Legislative Reform*, 11 J. of the Soc. of Comp. Legislation, N. s. (London) 161. The views of the author, very briefly stated, are as follows:

All liability in the law rests ultimately on principles of policy. In the discussion of questions of competition the difficulty arises out of the conflict of two great matters of policy. On the one hand, the State must preserve individual interests as far as possible, while, on the other, it must encourage business enterprise and competition. The problem is to strike a balance at the point most advantageous to the general welfare. The formula for determining this exact point, briefly stated, is, "The Nearer the Gain, the Better the Right." In other words, the legality of aggressive conduct must be determined by estimating its relation to an expected gain, not in the ratio of their respective quantities or amounts, but in the ratio of cause to effect. To gain sixpence in the course of business, A may inflict, if necessary to gain it, a loss of a million pounds upon B. But A may not inflict upon B a loss of sixpence merely in the hopes of gaining a million pounds. A must show, upon a reasonable hypothesis, an actual appreciable profit. In cases of great doubt, the proportion of damage to gain might be a convenient method of cutting the knot, but would not be an accurate application of this theory. In determining the proximity of the gain, the effect of the action in question must be calculated "objectively," the intention, purpose, or motive underlying the effort being unimportant. A practical application of this theory leads to certain general conclusions. (1) Competition is limited in time. The motive for toleration of any aggression ceases together with the cessation of the specific opposition in the market. (2) Competition must not extend beyond the limits of the actual market. (3) Vicarious attacks will not be allowed. An unauthorized person cannot commit acts of aggression on behalf of other persons, as, for instance, by a sympathetic strike. (4) The mere fact that it is necessary to strike at third persons to effectuate a competitive effort, does not make the aggression unlawful.

After developing his theory Mr. Chalmers-Hunt occupies some eighteen pages in analyzing the leading cases and in applying his principles to special facts. The writer also discusses such questions as "Picketing," "Fiduciary Relation," "Combination," and "Nuisance." Mr. Chalmers-Hunt is a recognized authority in this field, and is the author of a well-known work on "Trade Unions." To any investigator into the confused domain of the law of competition, the present article will prove invaluable.